

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROMEO COSCIA

Plaintiff,

v.

SALVATORE CAPONE

Defendant.

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:
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CIVIL ACTION

NO. 02-3655 (JRP)

LETTERS ROGATORY

I. (Items to be included in all Letters of Request.)

1. Sender

Hon. John R. Padova
United States District Court for the Eastern District of Pennsylvania
U.S. Court House
601 Market St. Room # 6614
Philadelphia, PA 19106-1759
(215) 597 – 1187 Telephone
(215) 580 – 2272 Fax

2. Central Authority of the Requested State

Ministero Degli Affari Esteri
Direzione Generale Emigrazione
Ufficio IX
00194 Rome, Italy
001-39-06-36-91-29-36

3. Person to whom the executed request is to be returned

Gary J. McCarthy, Esquire
John N. Salla, Esquire
Special Counsel
Eizen Fineburg & McCarthy, P.C.
Two Commerce Square, Suite 3410
2001 Market St.
Philadelphia, PA 19103

(215) 751 – 9666 Telephone
(215) 751 – 9310 Fax

II. (Items to be included in all Letters of Request.)

4. In conformity with Article 3 of the Convention, the undersigned applicant has the honor to submit the following request:

5. a. Requesting judicial authority (Article 3 (a))

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b. To the competent authority of (Article 3 (a))

Ministero Degli Affari Esteri
Direzione Generale Emigrazione
Ufficio IX
00194 Rome, Italy
001-39-06-36-91-29-36

6. Names and addresses of the parties and their representatives (Article 3 (b))

a. Plaintiff

Mr. Romeo Coscia
1464 Hark-Away Road
Chester Springs, PA 19425

Represented by:
Gary J. McCarthy, Esquire
John N. Salla, Esquire
Special Counsel
Eizen Fineburg & McCarthy, P.C.
Two Commerce Square, Suite 3410
2001 Market St.
Philadelphia, PA 19103

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and

Luciano Trofa,
Attorney at Law
Trofa Law Offices
Via Scandone 16/b – 83100 Avellino
Italy
011 39 (0825) 37930 Telephone
011 39 (0825) 37930 Fax

b. Defendant

Salvatore Capone
38 Laura Lane
Pittsgrove, NJ 08318

Represented by:
Francis Recchuiti, Esquire
Vangrossi & Recchuiti
319 Swede St., Second Floor
Norristown, PA 19401
(610) 279 – 4200 Telephone
(610) 279 – 4306 Fax

7. Nature and purpose of the proceedings and summary of the facts (Article 3 (c))

During February 1999, Romeo Coscia loaned \$140,000 to Salvatore Capone. Mr. Capone has not repaid the loan. On June 7, 2002, Romeo Coscia filed a lawsuit seeking repayment of the loan. The lawsuit was filed in the United States District Court for the Eastern District of Pennsylvania, U.S.A., Civil Action Number 02-3655. (“U.S. Case”) The Honorable John R. Padova is presiding over the U.S. Case. Mr. Capone has denied that Mr. Coscia lent him the \$140,000. See Amended Complaint and Answer attached as Exhibit A.

For the U.S. Case, a final pre-trial conference is scheduled for October 23, 2003 at 9:30 a.m. in Judge Padova’s chambers. Trial shall commence on November 3 at 9:30 a.m. in Courtroom 6A at the U.S. Courthouse, 601 Market Street, Philadelphia, PA, USA.

Mr. Coscia seeks to obtain bank records from banks in Italy. The bank records will be used at trial to corroborate Mr. Coscia’s testimony and to prove the loan made by Romeo Coscia to Salvatore Capone. See Exhibit B. Mr. Coscia, through his attorneys has unsuccessfully attempted to obtain authorization from Salvatore Capone to obtain these bank records.

During February 1999, the \$140,000 was deposited into Salvatore Capone's Italian bank account at *Banca di Credito Cooperativa Irpino* in Avellino. Salvatore Capone then withdrew the funds. During February 1999, these funds were then used to payoff a loan by an Italian bank, *Banca Popolare dell'Irpinia* in Avellino, to Guisepe Capone. See deposition of Romeo Coscia (Exhibit B) Arbitration Transcript page 117.

A request is made for account and other information for Salvatore Capone and Guisepe Capone for the month of February 1999 from the following banks:

Banca di Credito Cooperativa Irpino
Viaroma 14/16 83038
Montemiletto (AV), Italy

Banca Popolare dell'Irpinia SPR
Loc. Locollina Liguorini
Avellino, Italy

8. Evidence to be obtained or other judicial act to be performed (Article 3 (d))

All information and documents including without limitation all bank statements, deposit receipts, withdrawal receipts, cancelled checks and copies of signed currency regarding banking activity and accounts in the name of Mr. Salvatore Capone or Mr. Giuseppe Capone for the month of February 1999 from **Banca di Credito Cooperativa Irpino, Viaroma 14/16 83038 Montemiletto (AV), Italy**, with particular attention to a deposit of \$140, 000.

All information and documents regarding banking activity and accounts in the name of Mr. Salvatore Capone or Mr. Giuseppe Capone for the month of February 1999 from **Banca Popolare dell'Irpinia, Loc. Locollina Liguorini Avellino**, Italy, with particular attention to a deposit of between 200,000,000 and 400,000,000 Lira.

III. (Items to be completed where applicable.)

9. Identity and address of any person to be examined (Article 3 (e))

N/A

10. Questions to be put to the persons to be examined or statement of the subject- matter about which they are to be examined (Article 3 (f))

N/A

11. Documents or other property to be inspected (Article 3 (g))

All information and documents including without limitation all bank statements, deposit receipts, withdrawal receipts, cancelled checks and copies of signed currency regarding banking activity and accounts in the name of Mr. Salvatore Capone or Mr. Giuseppe Capone for the month of February 1999 from *Banca di Credito Cooperativa Irpino*, Viaroma 14/16 83038 Montemiletto (AV), Italy, with particular attention to a deposit of \$140,000.

All information and documents regarding banking activity and accounts in the name of Mr. Salvatore Capone or Mr. Giuseppe Capone for the month of February 1999 from *Banca Popolare dell'Irpinia*, Loc. Locollina Liguorini Avellion, Italy, with particular attention to a deposit of between 200,000,000 and 400,000,000 Lira.

12. Any requirement that the evidence be given on oath (Article 3 (h))

Yes. See Exhibit C attached..

13. Special methods or procedure to be followed (Articles 3 (i) and 9)

Pursuant to Federal Rules of Evidence 902 (12) and 803 (6), the custodian of the records should sign under penalty of perjury a document certifying that the records (a) were made at the time at or near the time of occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; (b) were kept in the course of regularly conducted activity; and (c) were made in the regularly conducted activity as a regular practice. See Exhibit C attached.

14. Request for notification of the time and place for the execution of the Request and identity and address of any person to be notified (Article 7)

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Attorney at Law
Trofa Law Offices
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Italy
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011 39 (0825) 37930 Fax

15. Request for attendance or participation of judicial personnel of the requesting authority at the execution of the Letters of Request (Article 8)

Luciano Trofa,
Attorney at Law
Trofa Law Offices
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Italy
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16. Specification of privilege or duty to refuse to give evidence under the law of the State of origin (Article 11 (b))

17. The fees and costs incurred which are reimbursable under the second paragraph of article 14 or under article 26 of the Convention will be borne by

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IV. (Items to be included in all Letters of Request.)

18. Date of request

June 3, 2003

19. Signature and seal of the requesting authority

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